



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street
New York, New York 10007*

April 13, 2023

BY ECF

The Honorable Lewis J. Liman
United States District Judge
500 Pearl Street
New York, NY 10007

Re: *American Civil Liberties Union, et al. v. National Security Agency, et al.*,
23 Civ. 907 (LJL)

Dear Judge Liman:

This Office represents the defendant agencies in this Freedom of Information Act (FOIA) case. I write jointly with plaintiffs to provide a status report as directed by the Court's March 16, 2023 order, and to make a scheduling proposal with plaintiffs' consent.

Background. Plaintiffs' FOIA request seeks recent opinions of the Foreign Intelligence Surveillance Court (FISC) addressing novel or significant issues, including opinions addressing the government's surveillance activities under Section 702 of the Foreign Intelligence Surveillance Act. Defendants previously identified two opinions responsive to Plaintiffs' request. As noted in the previous status report, ECF No. 23, the Office of the Director of National Intelligence (ODNI) is currently reviewing those opinions for potential public disclosure under a separate, non-FOIA declassification review pursuant to 50 U.S.C. § 1872. The government is not able to provide an estimated timeline for the completion of that process at this time. The parties have conferred, and plaintiffs have determined to proceed with processing their FOIA request.

In addition, ODNI just today identified a third responsive opinion. Defendants have not had a chance to review this opinion to determine what consultations will be required to process it under FOIA, but will promptly undertake that review and apprise plaintiffs within one week so that the parties can confer.

Processing proposal. The parties agree the government will complete all FOIA processing of the two opinions initially identified as responsive within 90 days, or by **July 12, 2023**. By that date, the government will release any responsive, non-exempt records or portions of records to plaintiffs. It is possible that the declassification review process will conclude before the FOIA process does. In that event, the government will apprise plaintiffs if any releases are made through the declassification review process and the parties will confer about any impact on this FOIA litigation.

With regard to the third opinion recently identified as responsive, defendants will advise plaintiffs by **April 20, 2023**, as to whether they believe it can also be processed by July 12, 2023.

Honorable Lewis J. Liman
April 13, 2023

Page 2

The parties will confer and propose a schedule for processing that opinion to the Court by **April 27, 2023** (or the parties' respective proposed schedules if they cannot reach agreement).

Answer. This FOIA action will likely be resolved either without motion practice, or through cross-motions for summary judgment based on legal argument and factual matter provided by declarations. *See, e.g., Wood v. Fed. Bureau of Investigation*, 432 F.3d 78, 85 (2d Cir. 2005); *Carney v. Dep't of Just.*, 19 F.3d 807, 812–13 (2d Cir. 1994). Because the government's answer is not likely to be relevant to the case's resolution, we respectfully request that the time to answer be adjourned without date. If at some later time the government's answer becomes relevant to any issue, the parties will confer and propose a new answer date.

We thank the Court for its attention to this matter.

Respectfully submitted,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: /s/ Peter Aronoff
PETER ARONOFF
Assistant United States Attorney
Telephone: (212) 637-2697
Facsimile: (212) 637-2717
E-mail: peter.aronoff@usdoj.gov

Counsel for Defendants

cc: Counsel for Plaintiffs (via ECF)